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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Initial reports of States parties due in 1993

Addendum

GUATEMALA

[7 December 1994]

CONTENTS

	Paragraphs	Page
INTRODUCTION	1 - 5	2
I. GENERAL	6 - 13	2
II. INFORMATION IN RELATION TO EACH OF THE ARTICLES IN PARTS I, II and III OF THE COVENANT	14 - 93	4
A. Part I of the Covenant	16 - 20	4
B. Part II of the Covenant	21 - 41	5
C. Part III of the Covenant	42 - 93	9

INTRODUCTION

1. The International Covenant on Civil and Political Rights was adopted by the General Assembly of the United Nations in its resolution 2200 A (XXI) of 16 December 1966. It entered into force on 23 March 1976 in accordance with article 49. It entered into force for the State of Guatemala upon its approval by the Congress of the Republic, on 19 February 1992, by Decree No. 9-92.

2. Under the rules laid down by the United Nations, the initial report of the State of Guatemala should have been submitted in 1993. The initial report not having been transmitted at that time, the State of Guatemala undertakes henceforth strictly to comply with its obligations as a signatory to the international human rights instruments which it has approved.

3. The present report is in two parts. Part I, dealing with general matters, briefly describes the general legal framework of the Covenant, with reference to the internal law of Guatemala, using as a basis points (i) - (v) of the Manual on Human Rights Reporting, prepared by the United Nations Centre for Human Rights (United Nations Publication, Sales No. E.91.XIV.1, p. 80). Part II deals with each of the articles of the Covenant (arts. 1 to 27), with reference to the internal law of Guatemala, drawing attention to consistency between the two and any differences between them. This part also deals with actual cases that occurred in the State of Guatemala which demonstrate compliance with the norms laid down in the Covenant and in other human rights instruments to which Guatemala is a signatory.

4. The cases mentioned in this report are the most significant ones by reason of the fact that they gained both national and international attention because of their particular nature. As for cases that have not been mentioned, these are the subject of judicial proceedings in the Guatemalan courts. Their number is not known. The State of Guatemala therefore recognizes the existence of certain limiting factors as regards respect for and observance of civil and political rights. It is, however, fully determined to improve the functioning of its machinery for ensuring observance of and respect for those rights.

5. The State of Guatemala considers the dissemination of and publicity concerning the international covenants to be a matter of importance and national distribution measures are being implemented in order to ensure that all inhabitants of Guatemala are familiar with and may invoke the Covenants whenever they consider that their human rights have been infringed.

I. GENERAL

6. This part briefly describes the general legal framework of the Covenant, with reference to Guatemala's internal law relating to human rights. The rights to which the Covenant relates can be said to be protected in the Constitution of Guatemala and in the Comprehensive Agreement on Human Rights signed by the Government of the Republic of Guatemala and the National Revolutionary United Front (URNG), in Mexico City, on 29 March 1994.

7. As far as provisions relating to suspension of these rights are concerned, and the circumstances in which they apply, the Constitution of Guatemala provides that the rights may be suspended in case of invasion of Guatemalan territory, serious disturbance of the peace, activities against the security of the State and public disaster (art. 138).

8. All moral and physical persons domiciled in the territory of Guatemala are guaranteed the right to invoke the provisions of the Covenant vis-à-vis any civil or military authority if they consider that their human, civil or political rights are being infringed.

9. To this end, all authorities are under an obligation to consider and deal with any petition relating to human rights, in accordance with the law and within the time limits laid down (arts. 28 and 46 of the Constitution of Guatemala).

10. On the question whether the provisions of the Covenant must be incorporated in Guatemala's internal law, it is pointed out that on 19 February 1992 the Congress of the Republic adopted Decree No. 9-92 bringing the Covenant into force in Guatemala, with the result that the rules of the Covenant form part of Guatemala's internal law as from that date (art. 46 of the Constitution of Guatemala).

11. In Guatemala all the institutions constituting the three powers of the State (the Executive, the Legislature and the Judiciary) are under obligation to implement and to ensure the implementation of and respect for human rights (arts. 46, 141, 152, 153, 154, 155, 165, 171, 183, 203, 204 and 205 of the Constitution of Guatemala).

12. A person who claims that any of his rights have been violated may have the benefit of professional legal advice and submit to the competent authority an application for the restoration of his rights. For this purpose, he may avail himself of the administrative and judicial remedies provided for under Guatemalan law (arts. 28, 29 and 30 of the Constitution and Amparo, Habeas corpus and Constitutionality Act).

13. The measures taken by Guatemala to ensure observance of and respect for human rights include the creation of the Office of the Human Rights Procurator, which dates from before the entry into force of the Covenant (28 May 1987). The Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH), which was set up in 1991, also preceded the entry into force of the Covenant. In addition, the Comprehensive Agreement on Human Rights signed by the Government of Guatemala and the National Revolutionary United Front (URNG) on 29 March 1994, in Mexico City, is designed to regulate the question of observance of and respect for human rights. There are also, in certain ministries, special units which are responsible for promoting, by various means, the human rights culture and respect for and observance of human rights.

II. INFORMATION IN RELATION TO EACH OF THE ARTICLES OF PARTS I, II AND III OF THE COVENANT

14. This part deals with each of the articles of the Covenant with reference to the internal law of Guatemala and draws attention to consistency between the two and to any differences between them. It also deals with actual instances of enforcement of the law in Guatemala when the human rights protected by the Covenant and the Constitution have been infringed. There have, of course, been many cases to which the report does not refer. Those mentioned are the most significant ones, which received the most national and international attention.

15. The State of Guatemala recognizes that the content of the Covenant has not been circulated and publicized on a nation-wide basis. However, policies and measures currently being implemented will make possible, within the near future, communication of the culture of human rights to all social strata of the population.

A. Part I of the Covenant

16. With reference to article 1, it is pointed out that Guatemala respects the right of self-determination of peoples since, under the Constitution, it is a free, sovereign and independent State, organized so as to guarantee for its inhabitants the enjoyment of their rights and freedoms. Guatemala regulates its relations with other States in accordance with international principles, rules and practices, with the aim of contributing to the maintenance of peace and freedom, respect for and defence of human rights and the strengthening of democratic processes and international institutions, for the mutual and equal benefit of States (arts. 1 and 2, art. 138, para. 1, and art. 150 of the Constitution of Guatemala).

17. The State of Guatemala maintains relations of friendship, solidarity and cooperation with those States whose economic, social and cultural development are similar to its own, with the object of finding appropriate solutions to their common problems and to developing, jointly, policies that will promote the progress of other nations (arts. 149 to 151 of the Constitution).

18. With regard to economic, social and cultural development, the Constitution encourages initiatives in the fields of agriculture, livestock-raising, industry and tourism. It also promotes economic decentralization at the administrative level with the aim of ensuring integrated regional development. For this purpose, the territory of Guatemala is divided into eight regions:

1. Metropolitan
2. North
3. North-East
4. South-East

5. Central
6. South-West
7. North-West
8. L. Petén

(Congressional Decree 70-86, articles 1 to 3, and Constitution, articles 118 and 119).

19. Guatemala may dispose freely of its natural wealth and resources. This question is dealt with in articles 121 to 128 of the Constitution.

20. Furthermore, the rights protected in article 1 of the Covenant are not subject in Guatemala to any limitation or restriction, whether permanent or temporary. Consequently, persons residing in Guatemala benefit freely from these rights, with the full support of the law.

B. Part II of the Covenant

21. With reference to Part II of the Covenant (arts. 2 to 5), it should be noted that the State of Guatemala is constituted to protect the individual and the family, its supreme aim being the achievement of the common good. Furthermore, it is the duty of the State to guarantee, for the inhabitants of the Republic, life, liberty, justice, security, peace and the full development of the individual (arts. 1 and 2 of the Constitution).

22. The Constitution regulates the question of human rights in title II, dividing them into individual and social rights, which are dealt with in 136 articles (arts. 3 to 139).

23. Under the Comprehensive Agreement on Human Rights, signed in Mexico City on 29 March 1994 between the Government of the Republic of Guatemala and the National Revolutionary United Front (URNG), the parties formally undertake to strengthen the observance of and respect for human rights in the territory of Guatemala.

24. Furthermore, bills are currently in third reading in the Parliament, prior to enactment and promulgation, that are designed to protect other rights guaranteed by the Covenant. They relate to such matters as adoption, military and social service, children, domestic service and ILO Convention 169 concerning indigenous and tribal peoples in independent countries.

25. In the State of Guatemala any physical or moral person whose rights are considered to have been infringed may apply for the ordinary remedies provided for in the country's laws and, in special cases, may apply for the remedies of amparo, or habeas corpus or for a law to be declared totally or partly unconstitutional (arts. 8 to 10 of Decree No. 11-86, the Amparo, Habeas corpus and Constitutionality Act).

26. Attention is drawn to the fact that, in matters of human rights, treaties and conventions accepted and ratified by Guatemala take precedence over internal law (art. 3 of the Amparo, Habeas Corpus, and Constitutionality Act). The remedy of amparo is designed to protect individuals from threats of violation of their rights or to restore their rights if they have been

violated (art. 8 of the Amparo, Habeas Corpus and Constitutionality Act). There are no circumstances in which amparo is inapplicable and it must be granted whenever actions, orders, decisions or laws made by the authorities imply a threat to or restriction or violation of rights guaranteed by the Constitution and the law.

27. Any person unlawfully detained, imprisoned or prevented in any other manner from enjoying his individual freedom, or threatened with the loss of that freedom or subjected to vexatious treatment, even if he is imprisoned or detained in accordance with the law, has the right to apply to be brought before a court in order to secure the restoration or guarantee of his freedom or the cessation of the vexatious treatment or the termination of the coercion to which he has been subjected (art. 82 of the Amparo, Habeas Corpus and Constitutionality Act).

28. In Guatemala, laws, governmental orders and orders of any other kind which violate or distort rights guaranteed by the Constitution are null and void ipso jure. Therefore no law may conflict with the provisions of the Constitution (art. 115 of the Amparo, Habeas Corpus and Constitutionality Act). For the purposes of the remedies referred to in this paragraph, all days and hours are working days and hours; proceedings must be on plain paper; any notification must be given, at the latest, on the day following the decision in question, subject to the time necessary for delivery; and courts must give the hearing and deciding of such cases priority over other matters (art. 5 of the Amparo, Habeas Corpus and Constitutionality Act).

29. Guatemala respects and guarantees for all persons within its territory the rights recognized in the Covenant. During the period from January to December 1993, a total of 561,919 aliens entered the country. Of these 354,126 were males and 207,791 were females. They came from North America, Central America, South America, the Caribbean, Europe and the Near and Far East. All of them enjoyed the protection of the law (arts. 1, 2, 3, 4, 5, 6, 8, 12, 14, 15, 16, 17, 23, 24, 26, 28, 33, 35, 36 and 39 of the Constitution of Guatemala and arts. 1, 2, 3, 11, 12, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 61, 62, 63, 64, 65 and 66 of Presidential Decree Law No. 22-86, the Migration Act). Practical measures are currently being taken to ensure that all persons entering Guatemala are fully informed of the provisions of the Covenant and can, if necessary, invoke them for their benefit at any time.

30. In Guatemala, foreigners have in certain circumstances been the victims of attacks and, when this has happened, the civil security forces have taken action against the attackers and placed them at the disposal of the courts for appropriate action. An example of such a case was that which occurred on 8 March 1994 at Villa de Santa Lucía Cotzumalguapa in the department of Escuintla, when Melissa Caroll Larson, a United States citizen, was attacked by a mob of people who accused her of committing the offence of child abduction. This case is currently before the First Criminal Trial Court of First Instance of Escuintla (case No. 142-94), where it is being heard by the first judge of the court.

31. On 29 March 1994, June Diane Weinstock, a United States citizen, was attacked by a mob of people who accused her of committing the offence of

child abduction in the town of San Cristóbal Verapaz in the department of Alta Verapaz. This case is currently before the Second Criminal Investigation Court of First Instance of Cobán, Alta Verapaz (case No. 683-94), where it is being heard by the first judge of the court.

32. In the first of these cases 40 persons have been arrested and, in the second, 28. In both cases the accused will be subject to the outcome of the proceedings initiated against them.

33. It is again pointed out that the Constitution guarantees freedom and equality for all inhabitants of Guatemala and respect for and enjoyment of rights is thus ensured for all. This was shown on 21 July 1992 when a group of peasants from Cajolá, in the department of Quetzaltenango, held a public demonstration on the Plaza de la Constitución, opposite the Palacio Nacional, to protest against the failure of the Government authorities to accept their claims of ownership of the farms which they alleged belonged to them.

34. The demonstrators were driven by force from the Plaza by civil security forces of the anti-riot squad. Twenty persons were injured in this incident and 60 persons were intoxicated as a result of the use of tear gas. In observance of the provisions of the Covenant, criminal proceedings were initiated against five members of the National Police, who were accused of abuse of authority and assault. This case (No. 1913-92) was heard by the fifth judge of the Fourth Criminal Investigation Court of First Instance. Four hundred peasants appeared as the aggrieved parties. Judgement was given on 30 July 1993 and confirmed by the Third Division of the Appeal Court on 5 November 1993.

35. The following are further cases which demonstrate Guatemala's desire to ensure that the provisions of the Covenant are implemented.

36. On 28 October 1993, on the occasion of a public meeting held opposite the Parliament House, four journalists were attacked by a group of unidentified persons who also stole the photographic equipment which the journalists were carrying for their work. This case came before the Second Criminal Trial Court of First Instance and was heard by the fifth judge of the court, the charges being assault and robbery. The six accused secured revocation of the detention order made against them.

37. On 23 December 1993 a journalist was murdered by unidentified persons. This case (No. 313-93) came before the Sixth Criminal Investigation Court of First Instance. The charge was one of murder and was heard by the fifth judge of the court. The investigation is still proceeding.

38. With reference to article 4 of the Covenant, which provides that the States parties may take measures derogating from their obligations under the Covenant to the extent strictly required by the exigencies of the situation, it is pointed out that the Constitution of Guatemala establishes the obligation of the State and of the authorities to maintain for the inhabitants of Guatemala full enjoyment of the rights guaranteed by the Constitution. However, in the case of invasion of Guatemalan territory, serious disturbance of the peace, activities directed against the security of State or public disaster, the full effect of the rights relating to freedom of action, legal

detention, interrogation of persons arrested or imprisoned, liberty of movement, the right of assembly and the right to demonstrate, freedom of expression of views, the right to possess and bear arms and the regulation of strikes by State employees may be suspended (art. 138 of the Constitution).

39. In the event that such circumstances arise, the State of Guatemala respects international law and, as a signatory to the Covenant, has undertaken immediately to inform the other States parties, through official channels, concerning any provisions whose implementation has been suspended and concerning the reasons for such suspension. It is also obliged to communicate, through the same channels, the date of any termination of the suspension. The State of Guatemala has not, during the present decade, suspended any of the rights guaranteed by the Constitution. Any suspension will be reported immediately to the States parties, as provided for in the Covenant.

40. Observance and respect for the human rights of inhabitants of the territory of Guatemala are guaranteed. Any infringement of their rights is immediately brought to the attention of the authorities for appropriate legal action. They are not of solely internal concern but are also brought to the attention of the international community, as, for example, in the following cases:

(a) Nicolas Gutierrez Cruz. This soldier, serving in the Guatemalan army, was charged before the Military Prosecutor at Guatemalan army headquarters, acting as court of first instance, with four offences of murder. The case (No. 9392-92) was heard by the third judge of the court. The accused received a death sentence for the commission of these offences, which were perpetrated together with another soldier, Eliseo Suchite Hernandez, who is a fugitive from justice. In the course of the proceedings this soldier made application to the President of the Republic, through his defence counsel, for all the remedies provided by law, including the remedy of pardon. He was granted a presidential pardon, pursuant to the provisions of article 18 of the Constitution of Guatemala and article 4 of the Pact of San José, under which Guatemala respects the defence and protection of human rights. There have also been proceedings against four members of the army serving at the Cuartel General Justo Rufino Barrios. Eliseo Suchite Hernandez, who was charged with the offence of desertion, is currently a fugitive from justice. Another accused, Nicolas Gutierrez Cruz, is currently serving a sentence of 30 years non-commutable imprisonment at the Pavón Criminal Rehabilitation Centre;

(b) Members of the National Police Force. Five members of the National Police Force serving in the Department of Escuintla have been charged with the offence of homicide against Edgar Lester Garcia Fajardo, a minor, and of causing injuries to Sergio Antonio Merida Rojas, a student at the Military Polytechnic College. This case (No. 88-92) is being heard by the first judge of the Escuintla First Criminal Trial Court of First Instance. Following the criminal proceedings against them, these five accused have been released on bail.

41. It will thus be seen that, in Guatemala, any person responsible for the violation of human rights, whoever he may be, is brought before a court for trial in accordance with the internal law and with the international laws that have been ratified and approved by Guatemala.

C. Part III of the Covenant

42. A comparison of Part III of the Covenant (arts. 6-27) with Guatemalan domestic legislation shows that there is consistency between the Covenant and the corresponding national legal provisions.

43. In Guatemala the right to life is protected by domestic law. Nevertheless, because of the political, social and economic crisis besetting the country, there are cases of violent death among members of various social sectors: peasants, workers, students, trade unionists, members of the professions, university and schoolteachers, members of the civilian and military security forces, civil servants and political-party activists. Of the bloody deeds perpetrated against Guatemalan citizens, some are better known than others. A few cases have aroused the particular interest of specialized United Nations bodies and foreign Governments, which want them investigated and wish to prevent similar acts from occurring in the future. The following cases may be mentioned:

(a) Jorge Rafael Carpio Nicolle, journalist, political analyst, Secretary-General of the National Centre Union (UCN) party, editor and owner of the newspaper El Gráfico, and candidate for the presidency of the Republic during the recent electoral campaign. Mr. Carpio Nicolle was assassinated on 3 July 1993 in the vicinity of a place known as El Molino (province of El Quiché), while campaigning for his party. The case came before the second judge of the first-instance departmental court of investigation in El Quiché, where the initial proceedings were undertaken. The case number is 1156-93 and it is being handled by the first official of this court. Mr. Juan Vicente Villacorta, Mr. Rigoberto Rivas and Mr. Alejandro Avila, who were accompanying Mr. Carpio Nicolle, were also killed in the same attack. A group of assailants known as "Los Churuneles", comprising Marcelino and Nazario Tuy Taniel, Tomas Pérez Pérez and Jesús Cuc Churunel, were initially arrested and charged with this quadruple murder. They were released 10 months later by order of the judge. The following other suspects were subsequently arrested: Nicolas Jax Us, Juan Gómez, Isidro Mendoza Acabal, Moisés Ayún Chanchavac, Juan Chaperón Lajpop, Lorenzo Mendoza Ordóñez and Francisco Ixcoy López, all members of the civil self-defence patrols, Pedro Chaperón Lajpop, mayor of San Pedro Jocopilas (El Quiché), and Carlos Enrique López Girón, former provincial governor of El Quiché. The judge later ordered the release of Pedro Chaperón Lajpop, in accordance with his pre-trial rights, and Carlos Enrique López Girón, after he had given a sworn undertaking. The others are in detention and awaiting trial;

(b) Nicolas Gutierrez Cruz was initially sentenced to death but appealed for a pardon to the President of the Republic, on the basis of article 4 of the Pact of San José. His sentence was in fact commuted and he is currently serving a 30-year prison term.

44. In Guatemala no child or woman has ever been executed.

45. In connection with article 7 of the Covenant, there are in Guatemala no institutional forms of torture or medical or scientific experiments involving human beings.

46. At present the Government is in the best possible position to bring the armed conflict in Guatemala to an end and thus overcome the widespread crisis affecting the various levels of society.

47. On the question of article 8 of the Covenant, slavery does not exist in Guatemala; moreover, under the Constitution, equitable remuneration must be paid for all work, in accordance with the principles of equal pay for equal work performed in equal conditions and with equal efficiency and seniority. Consequently, forced or compulsory labour does not exist.

48. In connection with military and social service (Covenant, art. 8, para. 3 (ii)), the Constitution stipulates that such service is compulsory for all citizens when they reach the age of 18, with the exceptions provided for in the Army Organization Act. In addition, in accordance with this Act, on reaching the age of 18, every Guatemalan citizen has a duty to register with the military authorities and the right to have a record of that fact and a record of his military service when he is discharged (Constitution, art. 135; Guatemalan Army Establishment Act, arts. 67-72; Decree-Law No. 26-86 of the Head of State).

49. On the question of military service, the Human Rights Procurator published, on 4 July 1994, decision No. 02-94, which recommends to the Congress of the Republic that it should enact the new law on military service making provision for:

(a) The essential voluntary nature of enlistment in the armed forces;

(b) Recognition of conscientious objection to military service;

(c) The right to choose between military service and patriotic civilian service;

(d) Disciplinary and criminal sanctions to be imposed on the civilian or military authorities for any acts of omission or commission when they infringe the legal provisions relating to military service.

50. It should be mentioned that at present a preliminary Military and Social Service Bill is before the plenary Congress of the Republic and has reached its third reading.

51. With regard to article 9 of the Covenant, we wish to state that Guatemala has legal provisions concerning this question. The provision contained in paragraph 5 of this article is not, however, reflected in Guatemalan law since the injured party has the right to apply for the ordinary remedies established by domestic law against abuses committed by the authorities and, once they have been exhausted, to introduce amparo proceedings. Furthermore, the injured party may, if necessary, apply for the legal protection of

international human rights law, as has indeed already happened in a number of cases mentioned in this report (Amparo, Habeas Corpus and Constitutionality Act, arts. 8-10; Decree No. 1-86 of the National Constituent Assembly).

52. In relation to article 10 of the Covenant, Guatemala has regulations relating to the rights and obligations of detainees. For this purpose, the Directorate-General of Prisons, together with its various sections, and a Prisons and Released Prisoners Board are responsible for the conditions, humane treatment and defence of human rights of prisoners (Constitution, art. 19; Detention Centre Regulations).

53. The Pre-Trial Institutional Centre in Zone 18, Guatemala City, was designed for the detention of defendants pending their investigation and, where appropriate, subsequent transfer to a prison farm. At present the situation in the Centre is not as planned. This Centre and other centres invariably house a large number of inmates who tend to be a mixture of first offenders, reoffenders and sentenced prisoners.

54. With further reference to this article, it may be said to be implemented as far as minors are concerned; the Secretariat for Social Welfare of the Office of the President of the Republic is responsible for the protection and defence of the rights of minors, through 10 centres operating throughout the country - 6 treatment centres and 4 prevention centres (art. 20 of the Constitution, Government Order No. 662-90 of 1 August 1990). These centres concern themselves with the young population and train them in the following skills and occupations: operation of industrial machinery, textiles, domestic education, bread-making, welding, carpentry, electricity, occupational therapy, agriculture and livestock raising, typing, pastry-making and various manual skills.

55. Attention is drawn to the fact that the Children's Code, which is intended to provide full protection of the rights of children, is now before the Congress in third reading.

56. Article 11 of the Covenant is fully regulated by the Constitution in article 17, which provides that there shall be no imprisonment for debt, and it is implemented in practice since the magistrates' courts and civil courts which have been established, possess competence and jurisdiction to hear disputes brought by the parties in the area of legal transactions.

57. Article 12, paragraph 1, of the Covenant is dealt with in our internal laws and is implemented inasmuch as there is no restriction on the liberty of movement of individuals within Guatemala or on their freedom to choose their place of residence (art. 26 of the Constitution).

58. However, with regard to paragraph 2 of the same article, the internal law imposes a restriction that prevents a person's departure for another country if he is subject to a restriction of residence under earlier legal proceedings, unless he leaves behind a legal representative with adequate legal powers. Furthermore, senior Guatemalan officials who wish to leave Central America are also subject to restrictions imposed by internal legislation (art. 165 of the Constitution, Restricted Residence Act,

Congressional Decree 15-71 as supplemented by Congressional Decree 63-72, arts. 523, 524 and 525 of the Code of Civil and Commercial Procedure, Decree-Law No. 107).

59. Paragraphs 3 and 4 of article 12 of the Covenant are covered by internal legislation and are not subject to any restrictions in practice (art. 26 of the Constitution).

60. With reference to article 13 of the Covenant, which relates to the expulsion of aliens, it is pointed out cases of this type do not occur in Guatemala; on the contrary, the human rights of aliens are respected and observed by the law, and if such an act takes place it is carried out in strict application of domestic law (art. 26 of the Migration Act, Presidential Decree-Law 22-86).

61. With regard to article 14 of the Covenant, paragraphs 1 to 3, which refer to minimum guarantees to which individuals are entitled in the administration of justice, internal legislation in the State of Guatemala regulates this matter exactly as it is set out in the Covenant. In addition, to ensure the protection and implementation of and respect for human rights, the Code of Criminal Procedure which recently came into force constitutes an innovation in criminal law compared with the previous Code (arts. 6 to 19 of the Constitution, 1 to 23 of Decree 51-92, Code of Criminal Procedure).

62. Specifically in connection with everyone having adequate time and facilities for the preparation of his defence and for communication with counsel of his own choosing, the State of Guatemala has one national and two private universities with faculties of legal and social sciences, all of which have legal practice units for students, known as Bufetes Populares, that provide advisory services to anyone requesting them, particularly persons of limited means who are unable to pay for the specialized professional services of legal counsel.

63. In the State of Guatemala justice is dispensed without distinction of any kind, in strict conformity with the country's internal laws, and respecting the human rights of individuals. An example of this was the case of the foreign nationals Bernard Bereu and Marie Antoinette Perriard, who were kidnapped and later murdered. Two other foreign nationals, Philippe Lucien André Biret and Jean Philippe Paul Bernard, were accused of these acts and criminal proceedings were instituted against them in accordance with the law, initially before the Seventh Magistrates' Criminal Court. The case was subsequently transferred to the Second Criminal Investigation Court of First Instance which sentenced them to 30 years' imprisonment and to a fine of 50,000 quetzales, for civil liability. Subsequently, the third division of the Court of Appeal ordered the sentence to be quashed. These persons are at present imprisoned as a result of the trial. The accused have availed themselves of the ordinary remedies provided by Guatemalan internal law.

64. Article 14, paragraph 4, of the Covenant requires that the age of juvenile persons be taken into account; this is duly regulated by article 20 of the Constitution, the Minors' Code and Governmental Order No. 662 of 1 August 1990. Furthermore, the State of Guatemala has juvenile courts whose jurisdiction is restricted to juveniles; they are required to administer

justice in accordance with Guatemalan law while respecting and implementing the human rights of juveniles who come before them. The procedural guarantees set forth in paragraphs 5, 6 and 7 of article 14 of the Covenant are exactly matched by internal law (arts. 1 to 23 of Congressional Decree 51-92).

65. With reference to article 15 of the Covenant which relates to the non-retroactivity of laws, the Constitution covers this matter in article 15, which is fully observed.

66. With reference to article 16 of the Covenant, which states that everyone shall have the right to recognition as a person before the law, it is pointed out that this is the case in Guatemala, as regards both individuals and juridical persons, as can be seen from articles 1-31 of the Civil Code, Decree-Law No. 106.

67. With reference to article 17 of the Covenant, the Constitution sets out in articles 1 to 139 the individual and social guarantees to which all persons are entitled and which are in general being fulfilled. Regarding interference with correspondence, however, it should be noted that on 26 March 1993 the Office of the Human Rights Procurator, headed by the present Constitutional President of the Republic, Mr. Ramiro de León Carpio, submitted a written complaint to the Eleventh Magistrates' Criminal Court regarding violations of correspondence in the General Directorate of Posts and Telegraph, while the Office of the Government Attorney submitted a similar complaint to the Eighth Magistrates' Criminal Court. Both institutions concurred in stating that the correspondence of individuals was being violated in the central offices of the above-mentioned directorate, the accused being Mr. Juan Jose Orellana Garcia and persons unknown.

68. The fourth judge of the Criminal Investigation Court of First Instance dealing with the case handed down a sentence of preventive detention against this person for the offence of violation of correspondence and private papers with specific aggravating circumstances. The proceedings (case No. 734-93) are being conducted by the eighth judge of the Fourth Criminal Investigation Court of First Instance, and are at the summary procedure stage.

69. With regard to article 18, paragraphs 1, 2, 3 and 4, of the Covenant, concerning freedom of thought, conscience and religion, these rights may be considered to be regulated in Guatemala by articles 35 and 36 of the Constitution. Everyone has the right to freedom of thought and conscience and no restrictions exist in this regard. Similarly, in Guatemala the rights of individuals to exercise their freedom of religion without any restriction are protected. Furthermore, there is complete freedom of worship in Guatemala, since even in the national school system the pupils receive the religious education chosen by their parents in both private and public schools. During the present year 234 religious processions (Roman Catholic) took place in the streets of Guatemala City, not to mention those which normally take place in the interior, which tend to be more numerous. It should be noted that these public religious functions were authorized by the Departmental Governor's Office.

70. With reference to article 19, paragraphs 1, 2 and 3, of the Covenant, concerning the right to freedom of expression, opinion and information, these rights are duly regulated by the Constitution as part of people's individual guarantees, specifically in articles 30, 31 and 35. In this connection it is pointed out that in Guatemala full freedom of expression and opinion is enjoyed, since no restrictions are ever imposed on persons who express their views through the mass media (radio, press, television). Everyone also has the right, guaranteed in the Constitution, to hold a public demonstration without this giving rise to any objection, provided that he complies with the pre-established legal requirements, such as requesting authorization in advance. It is worth mentioning that, since 1993, 135 public demonstrations authorized by the Departmental Governor's Office, have been held, organized inter alia by social groups, trade unions, students' associations, trade associations, popular and peasant groups, federations of trade unions, movements of shanty-town dwellers, displaced persons, returnees, professionals and teachers.

71. Article 20 of the Covenant is matched by Guatemalan internal law as a whole, which prohibits any advocacy of national, racial or religious hatred that constitutes incitement to discrimination or violence. There have, in fact, been no cases of infringement of these internal legal provisions, which are regulated by the Constitution as individual and social guarantees in accordance with articles 1 to 139.

72. Article 21 of the Covenant relates to the right of peaceful assembly. This matter is regulated in Guatemala by article 33 of the Constitution, which places no restrictions on persons wishing to exercise this right other than those established by article 138 of the Constitution which refers to restrictions on constitutional rights in the event of invasion of the territory, serious disturbance of peace, activities against the security of the State or public disaster, when the rights referred to in articles 5, 6, 9, 26 and 33 and article 116, paragraph 1, of the Constitution may cease to have effect.

73. It should be noted that in matters of security the National Police is responsible for exercising strict professional vigilance in order to maintain order for the public in general and, naturally, for demonstrators as well. There are at present a total of 10,565 police officers, of whom 9,407 are male and 1,158 are female, distributed in 9 corps in Guatemala City and 22 departmental headquarters.

74. With reference to article 22 of the Covenant concerning the right to freedom of association with others, including the right to form and join trade unions for the protection of one's interests, the Constitution provides for this freedom in article 34. It also provides that no one shall be required to join or be a member of a group or association established for self-defence or a similar purpose. The Labour Code covers all matters relating to trade unions in its articles 206 to 234. There are at present 995 authorized trade unions, with 86,752 members, of whom 7,851 are females and 78,901 males. A National Police Union is currently being set up, in consultation with the Union of Trade Union and People's Action (UASP) pending official recognition of the legal personnel concerned. The army has no trade union, not even in an incipient form.

75. As regards article 23 of the Covenant concerning the entitlement of the family to protection, the right to marry and the equality of rights and responsibilities of spouses, the Constitution regulates this matter in articles 47 to 50 in terms of the protection the State owes to the family, the recognition of de facto unions, questions relating to marriage, the legal formalities for celebration of marriages and, lastly, equality of the children before the law, any discrimination between them being prohibited. Four courts with jurisdiction in family matters hear all cases involving such matters.

76. The Civil Code (arts. 78 to 189) regulates all matters concerning the family and marriage and expressly defines the rights and obligations arising from marriage, the protection a husband owes his wife, the cases where the wife is the legal representative of the family and where a de facto union should be declared, and the equality of rights and obligations of both spouses following marriage.

77. However, the question of adultery is regulated by the criminal law of the State of Guatemala (art. 232), with sole reference to the woman and not to the man, which might be considered to constitute a lack of equality of rights for women. Article 203 of the Civil Code regulates the question of adultery of the mother.

78. The legally established public legal offices of the universities (bufetes populares) have submitted to these courts 731 cases involving jurisdiction in oral alimony proceedings, increase in maintenance allowance, divorce by mutual consent, enforcement of alimony and security measures. These legal offices, using trainee lawyers (practising students), submit applications for residence permits, the correction and replacement of birth certificates, identification of third parties and cases of extrajudicial intestacy.

79. They submit ordinary applications in labour matters and provide advisory services to workers when their rights are violated.

80. In all cases the public legal offices provide appropriate legal advice free of charge, the basic philosophy of this service being to defend the rights of the needy.

81. As regards article 24 of the Covenant concerning the right of the child to measures of protection, to registration and to a name and the right to a nationality, the Constitution of Guatemala in article 20 regulates matters connected with the fact that a child who infringes the law may not be charged with an offence and the trend towards an integral education suitable for children and young people.

82. Article 4 of the Civil Code regulates matters concerning the identification of the individual, which comprises a first name and the surname of the parents, married or unmarried, who have recognized him. The children of unknown parents are registered with the name given them by the person or institution that registers them; these formalities are carried out at the civil registry office.

83. The rights of children are also protected in Guatemala through the Minors' Code.

84. The Congress of the Republic is currently giving a second reading to a draft Children's Code, designed to ensure better protection, on a broader basis, of the rights of children, and including reorientation and integrated education.

85. Children born to Guatemalan parents resident abroad, or who have returned from abroad, have the right to be registered in the civil register of the place where the birth took place, and they also have the right to opt for Guatemalan nationality once they attain their majority, by fulfilling the relevant legal requirements. This question is regulated in part by the comprehensive agreement on human rights concluded between the Government of Guatemala and the National Revolutionary United Front (URNG) on 29 March 1994, in Mexico City.

86. The Nationality Act provides in article 5 that in cases where a person has one or more nationalities in addition to Guatemalan nationality, the State of Guatemala recognizes their Guatemalan nationality exclusively. This does not apply to the Central American nationalities, but a Guatemalan will retain all the obligations and the rights devolving on him as a Guatemalan, and under no circumstances may he invoke any other sovereignty against that of Guatemala. Article 11 of the above-mentioned Act covers all matters pertaining to the option of Guatemalan nationality, the oath of fidelity to Guatemala, and renunciation of foreign nationality, these being highly personal acts which may not be performed by proxy and which only legal persons with legal capacity in civil matters may undertake. Naturally, in the case of children under age and persons without legal capacity, their legal representatives will act for them, except as provided for in the foregoing paragraphs.

87. Furthermore, the Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, signed in Oslo, Norway, on 23 June 1994, refers in paragraph 7.2 to: "Amendment of Decree 70-91, Temporary Act of replacement and registration of a birth certificate from civil registers destroyed by acts of violence, in order to set up a system suited to the needs of all populations, with registration procedures that deal with such formalities rapidly and free of charge. The opinion of the sectors concerned will be taken into account. Personal documentation and identification will be prepared as soon as possible." Paragraph 7.3 of the Agreement states that the necessary administrative measures must be taken to expedite and ensure that the children of banished Guatemalans born abroad are registered as Guatemalan nationals in accordance with article 144 of the Constitution.

88. With reference to article 25 of the Covenant concerning the right to take part in the conduct of public affairs, to vote and to be elected and to have access to public service, these questions are regulated by articles 135 to 137 of the Constitution, which are duly implemented. These rights are also regulated by article 3 of a specific act known as the Electoral and Political Parties Act.

89. The public administration has a total of 110,011 civil servants, of whom 68,317 are males and 41,694 females. Ten men and three women hold posts as Ministers of State. Vice-ministerial posts are held by 22 men and 4 women. Forty-five persons hold posts as directors-general, including 40 men and 5 women. Thirty-six women and 96 men act in general as advisors.

90. It will thus been seen that equality of rights between men and women exists where public sector posts are concerned.

91. With reference to the right to equal protection of the law (art. 26 of the Covenant), all persons living in the territory of Guatemala may be said to be duly protected by the Constitution, both in terms of their individual and their social guarantees, in articles 3 to 139 of the Constitution, which are effectively implemented; no discrimination in this respect exists either in the text of the law or in its practice.

92. As regards the right of ethnic minorities to have their own cultural life, religion and language in community with the other members of their group, the Constitution protects them in articles 66 to 70 which refers to the protection of ethnic groups, protection of indigenous land and agricultural cooperatives and land for indigenous communities. The Congress is currently giving a second reading, in plenary session, to a draft Indigenous Communities Act, as required by the Constitution. As a result of this, ILO Convention 169 of 1989 concerning indigenous and tribal peoples in independent countries, is also under discussion preparatory to a second reading in Congress.

93. The right of the ethnic minorities to a cultural, religious and linguistic life is thus respected and tolerated, without any form of discrimination. Furthermore, no conflict exists within Guatemalan society.

LIST OF ANNEXES*

1. Political Constitution of the Republic and amendments thereto

2. Civil Code

3. Criminal Code

4. New Code of Criminal Procedure

5. Minors' Code

6. Nationality Act

7. Family Court Act

8. Amparo, Habeas Corpus and Constitutionality Act

9. Migration Act

10. Electoral and Political Parties Act and Regulations thereunder

11. Expression of Opinion Act

12. Labour Code

13. Trade Union Association of Public Administration Employees Act

14. Army Establishment Act

15. Commission on Human Rights of the Congress of the Republic and the Human Rights Procurator Act

16. Official Declaration of Human Rights, 4 October 1993

17. Comprehensive Agreement on Human Rights, 29 March 1994

18. Monitoring mechanisms of the United Nations, 29 March 1994

19. Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, Oslo, 17 June 1994

20. Agreement on the establishment of the Commission for the historical clarification of human rights violations and acts of violence that have caused suffering to the people of Guatemala, Oslo, 23 June 1994

21. Government Order establishing COPREDEH, Amendments and Reforms.

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*/ The annexes may be consulted in the archives of the secretariat.